



CITY COUNCIL STAFF REPORT

MEETING DATE: August 21, 2002

ADOPT ORDINANCE NO. 1571, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 3.54 (Recreation Fees) OF TITLE 3 (Revenue and Finance) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING FEES FOR RECREATION SERVICES, INCLUDING CLASSES, FACILITIES AND ADMINISTRATIVE PROCESSING FEES

Agenda Item # 24

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

RECOMMENDED ACTION(S): Motion to Adopt Ordinance No. 1571, New Series, as amended.

EXECUTIVE SUMMARY:

On July 10, 2002 , the City Council Introduced Ordinance No. 1571, New Series, as amended, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:. If the City Council adopts the proposed fees, the City would collect from new revenues from users of the City's parks and sports fields.

ORDINANCE NO. 1571, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 3.54 (Recreation Fees) OF TITLE 3 (Revenue and Finance) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING FEES FOR RECREATION SERVICES, INCLUDING CLASSES, FACILITIES AND ADMINISTRATIVE PROCESSING FEES

WHEREAS, City of Morgan Hill provides numerous recreation services and leisure opportunities for its citizens through a wide variety of classes and facilities; and,

WHEREAS, on May 15, 1991, the City Council of the City of Morgan Hill adopted Ordinance No. 1030, N.S., codified as Chapter 3.54 of the Morgan Hill Municipal Code, which establishes city policy as to the criteria for establishment of fees to be charged for recreation services, and a methodology for adjustment thereof; and,

WHEREAS, the City Council finds that the operational costs of classes and facilities, as well as costs inherent in the administration of class registrations and facility bookings, necessitates charging fees to the public for such recreation services; and,

WHEREAS, the City Council of the City of Morgan Hill has received and duly considered the report entitled "Cost Recovery Study Findings," dated May, 2002, authored by DMG Maximus, portions of which address recreation services fees and charges; and,

WHEREAS, City staff has provided additional information to the City Council regarding the costs of providing recreation services to the general public, and the analytical process used to arrive at calculation of such costs; and,

WHEREAS, the City Council finds that due to the administrative timing issues regarding class implementation and registration the City Manager should be accorded the latitude to establish class fees; and,

WHEREAS, on July 17th, 2002, the City Council held a duly noticed public hearing, and considered all written and verbal information presented to it by staff and the public, which testimony and exhibits are hereby incorporated into the record of this matter; and,

WHEREAS, in light of the foregoing the City Council finds that amendments to the current ordinance are necessary to clarify the type of fees which may be charged, and the methodology for calculating the amount of such fees and any revisions thereto.

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 3.54.010 (Fee Criteria) of Chapter 3.54 (Recreation Fees) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to provide:

Section 3.54.010 Recreation fees ~~Fee criteria.~~

The following types of fees may be established, pursuant to resolution adopted by the Council, for recreation services: (1) class fees; (2) facility rental fees; and (3) administrative processing fees. In regards to facility rental and administrative processing fees, the city manager or designate will conduct a fee analysis ~~on a quarterly basis~~ to be utilized in establishing such fees for recreation services. The goal will be to enable the city to recover an increasingly greater share of total costs for adult activities and rental services. Emphasis in youth services will be on ensuring appropriate ~~maximum~~ cost recovery while minimizing the impact on youth participation. A balance will be sought between appropriate ~~maximizing~~ cost recovery ~~revenues~~ and providing affordable, quality recreational services in all three ~~both~~ instances.

SECTION 2. Section 3.54.020 (Fees may be adjusted in specialized areas on an as-needed and quarterly basis) of Chapter 3.54 (Recreation Fees) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to provide:

Section 3.54.020 Establishment and Revision of Fees ~~may be adjusted in specialized areas on an as-needed and quarterly basis.~~

1. The following factors may be considered ~~by the city manager methodology will be used~~ in establishing and revising fees:
 - A. Market analysis of public and private sector ~~opportunities: staff will conduct an on-going survey to determine~~ agencies, ~~both public and private~~ which are providing recreation opportunities;
 - B. Market survey of fees ~~and attendance: staff will identify the applicable fees charged~~ for recreation services by the agencies in the market survey;
 - C. Cost study of programs and services: ~~recreation and finance department staff will identify the cost of programs and services offered by~~ the recreation division services to ensure that fees are appropriately related to costs;
 - D. Projections of attendance levels for public and private recreation programs based on data collected by the city.
 - E. ~~Approval of fees and charges by city manager: staff will provide the city manager, for approval, with a proposed set of fees for the next activity quarter. This fee proposal should be provided to the city manager for approval forty-five days prior to the start of the activity quarter;~~
2. Class Fees: The City Manager is authorized to determine class fees, which fees should consider the above factors and be based on a reasonable cost recovery estimate.

3. Special exceptions: For special classes or programs not included in the published activity guide, a new fee may be charged as soon as approved by the city manager;

~~G. — Approved fees made available for public information: following approval, these fees will be charged for the respective activities to which they relate, made available to the public for their information and be included in the subsequent recreation activity guide.~~

SECTION 3. Severability. Should any provision of this ordinance be adjudged invalid by a court of competent jurisdiction, that portion shall be severed and the rest of the ordinance shall remain in effect and enforceable.

SECTION 4. Exemption from CEQA. Pursuant to Title 14, California Code of Regulations, Sections 15061 and 15273(a), the City Council finds that this ordinance is exempt from the California Environmental Quality Act.

SECTION 5. Effective Date; Publication. This Ordinance shall take effect from and after sixty (60) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Morgan Hill held on the 10th Day of July, 2002 and was finally adopted at a regular meeting of said Council on the 21st day of August, 2002 and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1571, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st Day of August, 2002.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: August 21, 2002

ADOPT ORDINANCE NO. 1572, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT AND THE APPROVAL OF A PRECISE DEVELOPMENT PLAN FOR THE CAPRIANO/MADRONE CROSSING DEVELOPMENT. THE RESIDENTIAL DEVELOPMENT PLAN IS ON A 68 ACRE SITE LOCATED ON THE WEST SIDE OF MONTEREY ROAD, SOUTH SIDE OF TILTON AVENUE, ON THE EAST SIDE OF HALE AVE. (APN's 764-09-005, 006, 007, 008, 009, 010 & 014) (APPLICATION ZA-00-05: HALE-GLENROCK BUILDERS/SHEA HOMES)

Agenda Item # 25

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

RECOMMENDED ACTION(S): Motion to Adopt Ordinance No. 1572, New Series.

EXECUTIVE SUMMARY:

On July 10, 2002, the City Council Introduced Ordinance No. 1572, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:. None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1572, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT AND THE APPROVAL OF A PRECISE DEVELOPMENT PLAN FOR THE CAPRIANO/MADRONE CROSSING DEVELOPMENT. THE RESIDENTIAL DEVELOPMENT PLAN IS ON A 68 ACRE SITE LOCATED ON THE WEST SIDE OF MONTEREY ROAD, SOUTH SIDE OF TILTON AVENUE, ON THE EAST SIDE OF HALE AVE. (APN's 764-09-005, 006, 007, 008, 009, 010 & 014) (APPLICATION ZA-00-05: HALE-GLENROCK BUILDERS/SHEA HOMES)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of the California Environmental Quality Act. A Mitigated Negative Declaration has been filed.

SECTION 4. The City Council finds that the proposed precise development plan is consistent with the criteria specified in Section 18.12.060 and Chapter 18.18 of the Morgan Hill Municipal Code.

SECTION 5. The City Council hereby approves of a precise development plan as contained in that certain series of documents dated May 31, 2002 (date stamped), on file in the Community Development Department, entitled "Site Development Plan - Lands of Glenrock" prepared by M.H. Engineering and as amended under Section 6 of this ordinance. These documents show the exact location and sizes of all lots in this development and the location and dimensions of all proposed vehicle and pedestrian circulation ways and drainage, open space and landscape areas.

SECTION 6. The requirements and specifications of this ordinance repeal and replace the plans and requirement of Ordinance 1456.

SECTION 7. The following conditions shall be applied:

1. An open space buffer of 100 ft. shall be established between the residential uses and the railroad.
2. Residential development shall be done in a manner which will minimize the need for sound walls. Such development methods would include units fronting or facing noise sources, frontage roads or the use of earth berms.
3. The average and median lot size of the single family detached homes (excluding any condominium or duets) shall be 12,000 sq. ft. for the over all 59.95 acre single-family R-1 12,000 development area.
4. The maximum number of homes (excluding the 8.25 acres of multi family) shall be 165 units. The maximum number of condominium units with the entire project shall be 16. The maximum number single family detached units shall be 138. And the minimum number of duet units (located out side of the condominium area) shall be 8.
5. A minimum of 5 acres of park/open space area shall be provided within the overall development.
6. A minimum of 20,000 sq. ft. of the R-1 12,000 area shall be utilized as a nursery or preschool facility. The school facility shall be located on lots 1 & 2 of the May 31 site plan. Elimination of this requirement shall not be considered by the Planning Commission and City Council until one year from the date of the issuance of the last building permit for the last residential unit within the entire RPD. The applicant must also show at that unsuccessful attempts have been made in obtaining a developer/operator for the childcare facility.
7. The single family lots within the R-2 area shall be a minimum of 9,000 sq. ft. The units proposed on the single family lots shall be review and approved by the Planning Commission and City Council as a future RPD amendment processed concurrent with the subdivision of the R-2 area.
8. All Below Market Rate, BMR, units proposed within the multi-family area of the project shall be of similar product type and density.
9. All public streets shall meet City requirements with the exception of Saffron Dr. which can be completed at a 54 ft. wide right of way.

SECTION 8. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 9. Effective Date; Publication. This Ordinance shall take effect from and after

thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at a Special meeting of the City Council of the City of Morgan Hill held on the 10th Day of July, 2002 and was finally adopted at a regular meeting of said Council on the 21st day of August, 2002 and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

☪ CERTIFICATE OF THE CITY CLERK ☪

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1572, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st day of August, 2002.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: August 21, 2002

ADOPT ORDINANCE NO. 1573, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A NEW PRECISE DEVELOPMENT PLAN FOR THE 98 ACRE MISSION RANCH DEVELOPMENT LOCATED ON THE SOUTH SIDE OF COCHRANE ROAD AND EAST OF MISSION VIEW DRIVE IN THE R-1 (7,000)/RPD ZONING DISTRICT. (APN 728-32-001, 002, 003 AND 728-33-001)

Agenda Item # 26

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

RECOMMENDED ACTION(S): Motion to Adopt Ordinance No. 1573, New Series.

EXECUTIVE SUMMARY:

On July 10, 2002, the City Council Introduced Ordinance No. 1573, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:. None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1573, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A NEW PRECISE DEVELOPMENT PLAN FOR THE 98 ACRE MISSION RANCH DEVELOPMENT LOCATED ON THE SOUTH SIDE OF COCHRANE ROAD AND EAST OF MISSION VIEW DRIVE IN THE R-1 (7,000)/RPD ZONING DISTRICT. (APN 728-32-001, 002, 003 AND 728-33-001)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3. INCORPORATING THE MAP BY REFERENCE.** There hereby is approved, a precise development plan shown in that certain series of documents dated July 31, 2001 (date stamped), on file in the Community Development Department, entitled "Site Development Plan - Mission Ranch" prepared by MH Engineering. These documents show the exact location and sizes of all lots in this development and the location and dimensions of all proposed vehicle and pedestrian circulation ways and drainage, open space and landscape areas.
- SECTION 4.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.
- SECTION 5.** The City Council finds that the amended RPD Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.
- SECTION 6.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.
- SECTION 7.** Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City

of Morgan Hill held on the 10th Day of July, 2002 and was finally adopted at a regular meeting of said Council on the 21st day of August, 2002 and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

🏛 CERTIFICATE OF THE CITY CLERK 🏛

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1573, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st day of August, 2002.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: August 21, 2002

ADOPT ORDINANCE NO. 1574, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A NEW PRECISE DEVELOPMENT PLAN FOR APPROXIMATELY 18-ACRES ON THE WEST SIDE OF PEET ROAD FROM R-1 (9,000) TO R-1 12,000 RPD AND INCORPORATING THE AREA WITH THE ADJOINING COYOTE ESTATES DEVELOPMENT, LOCATED ON THE NORTH SIDE OF COCHRANE ROAD AND WEST SIDE OF PEET ROAD. (APN 728-35-008, 9 & 10; 728-36-001 & 10) ZA-01-15: Cochrane-Coyote Estates

Agenda Item # 27

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

RECOMMENDED ACTION(S): Motion to Adopt Ordinance No. 1574, New Series.

EXECUTIVE SUMMARY:

On July 10, 2002, the City Council Introduced Ordinance No. 1574, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:. None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1574, NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A NEW PRECISE DEVELOPMENT PLAN FOR APPROXIMATELY 18-ACRES ON THE WEST SIDE OF PEET ROAD FROM R-1 (9,000) TO R-1 12,000 RPD AND INCORPORATING THE AREA WITH THE ADJOINING COYOTE ESTATES DEVELOPMENT, LOCATED ON THE NORTH SIDE OF COCHRANE ROAD AND WEST SIDE OF PEET ROAD. (APN 728-35-008, 9 & 10; 728-36-001 & 10)
ZA-01-15: Cochrane-Coyote Estates**

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

- SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3. INCORPORATING THE MAP BY REFERENCE.** hereby is attached hereto and made a part of this ordinance, a zoning map entitled "Exhibit A" Map Showing Re-zoning of Gateway Center being a part of Ordinance No. 1574, New Series, which gives the boundaries of the described parcels of Land.
- SECTION 4. INCORPORATING THE DEVELOPMENT PLAN BY REFERENCE.** There hereby is attached hereto and made a part of this ordinance, a Development Plan shown in that certain series of documents dated July 31, 2001 (date stamped), on file in the Community Development Department, entitled "Total Site Plan - Coyote Estates" prepared by MH Engineering. These documents show the exact location and sizes of all lots and elevations in this development and the location and dimensions of all proposed vehicle and pedestrian circulation ways and drainage, open space and landscape areas.
- SECTION 4.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. A mitigated Negative Declaration will be filed.
- SECTION 5.** The City Council finds that the amended RPD Overlay District is consistent with the criteria specified in Chapter 18.18 of the Morgan Hill Municipal Code.
- SECTION 6.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 7. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at a regular meeting of the City Council of the City of Morgan Hill held on the 10th Day of July, 2002 and was finally adopted at a regular meeting of said Council on the 21st day of August, 2002 and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

☪ CERTIFICATE OF THE CITY CLERK ☪

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1574, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st day of August, 2002.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: August 21, 2002

ADOPT ORDINANCE NO. 1575, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE STANDARDS AND CRITERIA AND PROCEDURES OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM AS SET FORTH IN CHAPTER 18.78 OF THE MORGAN HILL MUNICIPAL CODE.

Agenda Item # 28

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

RECOMMENDED ACTION(S): Motion to Adopt Ordinance No. 1575, New Series.

EXECUTIVE SUMMARY:

On July 10, 2002 , the City Council Introduced Ordinance No. 1575, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT: The final cost for preparation of staff reports, meetings and other research for this item has not been determined. The cost will be charged to the Community Development Fund pursuant to City Council Policy.

ORDINANCE NO. 1575, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE STANDARDS AND CRITERIA AND PROCEDURES OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM AS SET FORTH IN CHAPTER 18.78 OF THE MORGAN HILL MUNICIPAL CODE.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN:

SECTION 1. Subsections B.2 and B.3 of § 18.78.210 of the Morgan Hill Municipal Code are amended to read as follows:

B. Standard and Criteria:

2. Up to **four** additional **points** may be awarded to a project where:

At the time of application submittal or applicant commits as part of the first year of the first phase of the current application, a safe walking route exists between the project site and existing or planned MHUSD schools. A safe route is defined as continuous sidewalks and/or paved pedestrian pathways, cross walks and caution signals at designated street intersections between the project and a school site.

The distance to a school is measured as the lineal distance a student would walk, from the average center point of housing in a project to the nearest entrance point of the nearest school grounds.

a. The project is within 3/4 of a mile of a school servicing grades K through 3 and:

i. The students are not required to cross railroad tracks, or a street that currently functions (based on peak hour level of service) as a collector or arterial (**half point**).

ii. The students are not required to cross railroad tracks, or a street that is designated within the General Plan as a collector or arterial. (**half point**).

b. The project is within 3/4 of a mile of a school serving grades 4 through 6 and:

i The students are not required to cross railroad tracks, or a street that currently functions (based on peak hour level of service) as an arterial. (half point).

ii The students are not required to cross railroad tracks, or a street that is designated within the General Plan as an arterial. (half point).

c. The project is within 1.5 miles of a middle/intermediate school and:

i. The students are not required to cross railroad tracks, or a street that currently functions (based on peak hour level of service) as an arterial unless the most direct street crossing can occur at a signalized intersection. (half point).

ii The students are not required to cross railroad tracks, or a street that is designated within the General Plan as an arterial unless the most direct street crossing can occur at a signalized intersection. (half point).

d. The project is within 1.5 miles of a high school **(one point)**

e. Proposed development will be for senior citizens as defined in Section 51.2 of the State Civil Code. **(four points)**

Note: For scoring purposes, the anticipated attendance area for an existing or planned school shall be as determined by the Board of Education and published by the School District as of December 1 of the fiscal year for each competition year. A planned school is defined as a site designated by the School Board for a future school prior to March 1st of the fiscal year the competition is held. Scoring for a multi year/phased development includes recognition of all pedestrian safety or traffic improvements provided in the initial or previous phases of the development.

3. Up to 4 additional points may be awarded to a project which:

a. Provides off-site pedestrian safety improvements or traffic safety improvements near a MHUSD school. Improvements must be located within 1.5 miles (straight line distance) of a project site. Any proposed pedestrian and traffic safety improvements cannot be redundant of improvements committed to in other categories. The cost of the improvements must be valued at \$1000 per point per unit. For scoring purposes, priority will be given to pedestrian improvements and improvements made within 3/4 of a mile of the project. (up to three points)

b. The project is located within a Community Facilities (Mello-Roos) District

established by the Morgan Hill Unified School District to finance new school facilities. The proposed project phases(s) will only receive points in this category if their Mello Roos payment exceeds by \$1000 or more per dwelling unit the Leroy F. Green Schools Facilities Act (state-mandated) fees in effect on December 1st of the fiscal year of the competition. One point will be awarded for each \$1000 per dwelling unit the proposed project's average dwelling unit school fees costs exceeds the state-mandated per dwelling unit fees. **(up to three points)**

NOTE: Full market value credit will be applied to a direct payment to the School District, for donated land, construction, or other services provided by a developer or project property owner that relate to provision of school facilities.

SECTION 2. Subsections B.1 c., d. & e § 18.78.220 of the Morgan Hill Municipal Code are amended to read as follows:

B. Standards and Criteria.

1. Open space areas are provided or maintained within the proposed development.

c. Provides convenient access to public or private parks internal to the project where appropriate through the use of bicycle and pedestrian pathways. Bicycle and pedestrian pathways shall be located in areas no less than 20 ft. wide, with an average width of 30 ft. (for the entire length of the path.) The pathway provided shall be paved or other suitable durable surface and a minimum of 7 ft. in width. The proposed pathway(s) cannot be redundant of public sidewalks. **(one point)**

d. Provides accessibility to existing or proposed public parks and open space areas outside the project boundary and encourages multiple uses and fee dedication of open space areas adjacent to flood control right of ways and recharge facilities. Points will only be awarded where the relevant public agency has provided written approval to allow access between the project and the aforementioned facilities. The access provided cannot be redundant of the public sidewalk **(one point);**

Note: Requires public agency ownership or agreement to accept dedication of the land by the public agency.

e. Historical sites and landmarks on or adjacent to the project site are maintained in as natural state as possible with limited supportive development such as parking facilities, fencing, signing, etc. **(up to two points).**

SECTION 3. Subsection B.3 § 18.78.220 of the Morgan Hill Municipal Code is amended to read as follows:

B. Standards and Criteria.

3. There is a maximum of **6 points** available in this category.

a. The project will receive **three points** for a commitment to purchase transferable development credits (TDCs) from property owners with land of greater than twenty percent slope. (Based upon the cumulative project to date ratio of one TDC for every twenty-five dwelling units proposed.).

b. Projects of 24 units or less which do not provide a common area park or open space will receive **six points** for a commitment to purchase double TDC's.

c. Projects zoned R-2, R-3, or similar higher density classification will receive **six points** for a commitment to purchase double TDC's.

Note 1: In lieu of the TDC commitment, projects of 24 units or less and affordable project developments will be awarded **four points** for payment of an open space fee at the rate of \$15,000 per TDC. Eligible projects that elect to pay double the open space fee will be awarded **six points**. The amount of the open space fee shall be based on the average cost per dwelling unit for an equivalent TDC commitment as specified above. The open space fee shall be adjusted annually in accordance with the annual percentage increase or decrease in the median price of a single-family detached home in Santa Clara County. The base year from which the annual percentage change is determined shall be January 1, 1996. The base year may be adjusted by City Council Resolution prior to the filing deadline for each competition year.

Note 2: Projects containing both single and multi-family zoning will be granted a proportional share of points for commitments to a. & c above. Points will be granted based on a percentage of units within the various zoning districts within the entire overall project. For example, a project of 50 percent R-2 and 50 percent R-1 would receive 50 percent of the 6 points available under 3c. and 50 percent of the 3 points available for the single family TDC commitment under 3a. For a total of 4.5 points (rounding will occur to the nearest half point.)

SECTION 4. Subsections B.3 and B.4 of § 18.78.230 of the Morgan Hill Municipal Code are amended to read as follows:

B. Standards and Criteria.

3. A proposed development located within the existing urban service area which provides for orderly growth and urban in-fill is preferable and helps prevent premature urbanization of agricultural land. Projects that provide for orderly growth patterns throughout residential neighborhoods and compatibility with adjacent and nearby land uses are preferable. Projects that are located adjacent to land that has been developed or approved for development shall be scored as follows:

- a. > 0 -- 20% Adjacent to existing development. **(one point)**
- b. >20 -- 40% Adjacent to existing development. **(two points)**
- c. >40 -- 60% Adjacent to existing development. **(three points)**
- d. >60 -- 80% Adjacent to existing development. **(four points)**
- e. >80 -- 100% Adjacent to existing development. **(five points)**

Adjacent development is defined as contiguous property located within MH's city limits, urban service area, or urban growth boundary (UGB) and which is developed to its ultimate potential according to the city's general plan or zoning of the property, or at least substantially developed according to the general plan or zoning. To be considered substantially developed, at least ninety-five percent of the contiguous land area must be committed or developed to its ultimate use. Contiguous property does not include streets, railroad rights-of-way, or parcels held in fee title by a public utility or public agency containing above or below ground utilities such as gas pipelines, electric power transmission lines, or major water distribution pipelines.

County lands dedicated as a public facility or encumbered with an open space easement, or contiguous property within MH's UGB committed to an ultimate land use such as a city park, developed school site, or private open space will also be considered as adjacent development. Open space lands which are owned in private must have a public open space easement recorded over the corresponding area. For scoring purposes, undeveloped property which by December 1st of the fiscal year the competition is held has received either final map approval, or tentative map and development agreement approval for projects with previously completed phase(s), or for which building permits have been issued, shall be considered to be developed property. The perimeter established for the complete (master-planned) project will be used to determine adjacency for every RDCS submittal. Where previously allocated phases of the same project have been developed or have received final map approval and are immediately adjacent to an otherwise undeveloped external boundary, that portion of the project's perimeter shall then be considered developed, provided the project is making satisfactory progress according to the approved development schedule (project is not in default).

The percentage of a property that is adjacent to development shall be that percentage of the combined length of the subject property lines which is determined to be contiguous to adjacent development as defined in this subsection. The subject property is defined as a single parcel or contiguous parcels of record on which the proposed project would be located and shall include that portion of the subject property designated for future development. A designated remainder parcel shall not be considered a portion of the subject property except where development on all or a portion of the remainder parcel is proposed as part of the current project application.

4. A proposed development which is a subsequent phase of a previously approved project that has been awarded allotments provides for the continuous extension of existing development.

a. A proposed development which is a subsequent or final phase of a previously allocated development and consists of 30 dwelling units or less shall be awarded two points. **(two points)**

b. A continuing project will receive one point if one half of the units allocated for the fiscal year the competition is held meet the under construction criteria by December 15, AND all prior phases are under construction or completed (excluding customs.) For example, a project in the competition held in FY 2002-03 with allocations within fiscal year 2002-03, must have 50% of its 2002-03 allotments and all prior years units under construction by December 15, 2002 to be eligible for this point (one point). **OR**

If a proposed development is a continuing project and does not have any allocations for the FY the competition is held, the project will receive one point if all previous phases (if any) are under construction.

Note: To qualify for any points under paragraph B4, the proposed development at total build-out, shall not exceed the number of units proposed in the original Development Application from which the project had been awarded an initial building allotment, unless approved by the Planning Commission prior to the competition's application submission deadline. The number of units requested for each subsequent fiscal year shall be no more than 25% above any single highest year allotment for the proposed project to a maximum of 30 units. The 25% or 30-unit limit includes any units already allocated to the project in that fiscal year as a result of a prior fiscal year competition. For part 4a., earlier phases of development must also be in compliance with the development schedule approved for the project.

SECTION 5. Subsection B.2e of § 18.78.240 of the Morgan Hill Municipal Code is amended to read as follows:

B. Standards and Criteria. **(Maximum ten points)**

2. Installs public facilities of sufficient size to serve the proposed development and future developments without the need to install supplemental facilities.

e. Applicant will contribute \$1,000 per unit to the Local Drainage Non-AB1600 fund for off-site storm drainage improvements, in addition to payment of standard fees. **YES___, or NO___** (Contingent commitments will not receive point) **(one point)**

SECTION 6. Subsection B.2f of § 18.78.240 of the Morgan Hill Municipal Code is amended to read as follows:

B. Standards and Criteria. **(Maximum ten points)**

2. Installs public facilities of sufficient size to serve the proposed development and future developments without the need to install supplemental facilities.

f. Provides public facility improvements on or adjacent to the project in excess of standard requirements, e.g., sewer, traffic control. **(maximum four points)**

Note: Under this criteria, the applicant needs to explain how and why the offered public improvements exceeds the city standards. Furthermore, the cost of the offered public improvements and dedication shall be equal to or greater than \$1000 per unit per point. Should the offered dedication and improvements be redundant to those offered under 5 a-c. of the Circulation Efficiency category, the value of the redundant improvements will be reduced by \$1000 per unit per point for each point awarded under 5 a-c in the CE category. For example, if redundant improvements are valued at \$3000 per unit here, and 2 points were awarded for them in CE, then only 1 point would be awarded for them here.

Emphasis will be placed on improvements on or adjacent to the project but consideration will also be given to projects that provide improvements within one mile beyond their project boundaries.**(one - four points)**

SECTION 7. Subsection B.2g of § 18.78.240 of the Morgan Hill Municipal Code is amended to read as follows:

B. Standards and Criteria. **(Maximum ten points)**

2. Installs public facilities of sufficient size to serve the proposed development and future developments without the need to install supplemental facilities.

g. Applicant will contribute \$1,000 per unit to the Public Facilities Non-AB1600 fund. **YES** __, **or NO** __ (Contingent commitments will not receive point) **(one point)**

NOTE: Proposed developments must be assigned a minimum passing score of five points under this category in order to qualify for building allotments.

Scoring for a multi year/phased development includes recognition of all public facility improvements committed to be installed in the initial or previous phases of development (project completed to date vis-a-vis improvements completed to date). The initial or previous phase of development must also be in compliance with the development schedule approved for the project.

SECTION 8. Subsections B.5 & B.6 of § 18.78.250 of the Morgan Hill Municipal Code are amended to read as follows:

B. Standards and Criteria.

5.

a. In addition to payment of standard park fees, applicant will pay the lesser of double the required in lieu park fees or \$1,000 per point up to \$3,000 per unit. **(up to three points) or**

b. Applicant (projects of 24 units or less who do not provide a park) will pay the lesser of triple the required in lieu park fees or \$1,000 per point up to \$6,000 per unit. **(up to six points)**

6. Public or private parks provided by the project exceed the dedicated land requirements stated in Chapter 17.28 of the Morgan Hill Municipal Code. **(one point if exceed the requirement by 20%, two points if exceed by 30%, 3 points if exceed by 40% , or 4 points if exceeds by 50%)**

Note: The number of recreational amenities required pursuant to Section 18.18.060 shall be based on the total number of dwelling units within the project, including secondary dwelling units as defined in section 18.04.164 of this title.

Scoring for a multi year/phased developments includes recognition all recreational amenities provided in the initial or previous phases of development (amenities provided to date vis-a-vis project completed to date). The initial phase of development must also be in compliance with the development schedule approved

for the project.

SECTION 9. Subsections B.1-3 of § 18.78.260 of the Morgan Hill Municipal Code are amended to read as follows:

B. Standards and Criteria.

1. Provides affordable housing units for households ranging from very low to moderate income. Most units sold or rented at below market rate will receive increased density.

2. Over and above the BMR units committed in this section, the project provides an additional 10% detached units in an R-2 project or an additional 10% attached units in an R-1 project. (two points) OR

Projects that have both R-2 and R-1 zoning designations can receive **one point** for providing an additional 10% detached units in the R-2 project area and/or **one point** for providing an additional 10% attached units in an R-1 portion of the project.

3. The project will receive an average score (**eight seven points**) if it chooses to pay the standard housing mitigation fee computed at ten percent of the total project.

Projects are also eligible to receive points in this category based on the percent and level of affordability of below market rate units built within the project. When in the process of determining the number of below market rate units required, there occurs a fraction of a unit, any fraction less than .5 shall be paid as a corresponding fraction or percentage of the per unit cost of the standard housing mitigation fee. In phased developments, developer may carry the fractional share forward into succeeding phases until the fraction reaches .5 or higher. Any fraction of .5 or greater shall be deemed a requirement for one additional below market rate unit. The developer, however, may continue to carry the partial credit forward into the next phase(s) of the overall development. Refer to the following charts to compute points.

SECTION 10. Subsection B.4 of § 18.78.260 of the Morgan Hill Municipal Code is amended as follows:

B. Standards and Criteria

4. Affordable Units For Sale

P o l i c y I n t e n s i t y	10% or Greater BMR Commitment		5% BMR Commitment		Allowable Density Bonus
	Percentage of BMR units	Percentage of BMR units	Percentage of BMR units	Percentage of BMR units	
	LOW	MEDIAN	LOW	MEDIAN	
13	5	10	8		15%
13	8	4	3		12%
13	10				10%
9	5	5			7%
5	0	10	5	0	4%
3			0	5	1%
87	Pay mitigation fee				0
0	No mitigation				

Affordable Units For Rent:

10% BMR Commitment

5% BMR Commitment

P o i n t s	Percentage of BMR units VERY LOW	Percentage of BMR units LOW	Percentage of BMR units VERY LOW	Percentage of BMR units LOW	Allowable Density Bonus
15	10	0			10%
11	5	5			7%
7	0	10	5	0	4%
3			0	5	1%
8 7	Pay mitigation fee				0
0	No mitigation				

SECTION 11. Subsections B.5 and B.6 of § 18.78.260 of the Morgan Hill Municipal Code are amended as follows:

B. Standards and Criteria.

5. A project may also be awarded ~~15~~ **13** points if at least 10 percent of the dwellings are affordable at below market rates and the BMR units are constructed in a joint venture with a non profit builder. The following criteria shall apply to the joint venture development:

a. A letter of intent signed by both parties must be included with the Measure P application.

b. The homes are to be built by the nonprofit agency through a self help building program or other applicable program approved by the City.

c. The project must provide an area for a minimum of 8 BMR units as part of the joint venture agreement. If 10 percent of the project is less than 8 dwelling units,

allocations above 10 percent of the project may be drawn from the affordable allotment set-aside if available, to achieve the 8 unit minimum..

d. The price range and target income of the buyers shall determined and approved by the City and non profit agency prior to the Measure P application.

e. The site and architectural plans for the affordable units shall be shown on the plans and shall be considered part of the market rate application.

Note: If the applicant and non profit agency are unable to obtain the necessary funding, allotments, or encounter other obstacles and are unable to produce the affordable housing through the joint venture agreement; then the applicant will be required to choose one of the other options to achieve the ~~15~~ **13** points under criteria B4 in this category. Any unused affordable building allotment transfer shall be returned to the affordable allotment set-aside category.

6. A Micro, Small, or any project having all lots in excess of 20,000 square feet, will receive **seven points** if it chooses to pay double the standard housing mitigation fee computed at ten percent of the total project.

SECTION 12. Subsection B.1 b of § 18.78.270 of the Morgan Hill Municipal Code is hereby added as follows:

B. Standards and Criteria.

1. Provides for a diversity of housing types:

b. The project provides an additional 10 percent of its units as moderate rate homes. These units would not participate in the City's BMR program but would be in addition to the project's BMR commitment. The final sales price (at close of escrow) for the units will be based on HUD income limits for a family of 4 at the closing date. (two points)

Note: The 10 percent determination will be based on the overall project. For on-going projects, this criteria will be applied to the remaining phases only. The percentage requirement stated above shall be an absolute figure, rounding to the nearest whole number. This criteria only applies to for sale projects.

SECTION 13. Subsection B.2 of § 18.78.270 of the Morgan Hill Municipal Code is amended to read as follows:

B. Standards and Criteria.

2. Provides for an economic diversity within the project.

a. The proposed project would augment the existing housing stock by providing housing which would be affordable under the income categories described below. A maximum of **four two points (or four points if for rent)** may be awarded to projects which reserve a portion of the total units (see table below) as affordable to very low income households within 100 percent rental projects or low income (ownership units) in other projects.

Note: A Micro, Small, or any project where all lots are in excess of 20,000 square feet, will receive **two points** if it chooses to pay the standard housing mitigation fee computed at ten percent of the total project, or **four points** if it chooses to pay double the housing mitigation fee.

For Sale Projects

10% or greater BMR Commitment			5% BMR Commitment	
P o i n t s	Provides for 10%+ affordable units	Provides for 10%+ affordable units	Provides for 5% affordable units	Provides for 5% affordable units
	LOW	MEDIAN	LOW	MEDIAN
4 2	5	8		
4 2	8	3		
4 2	10			
3 1	5	5		

Note: If the applicant and non profit agency are unable to obtain the necessary funding, allotments, or encounter other obstacles and are unable to produce the affordable housing through the joint venture agreement; then the applicant will be required to choose one of the other options to achieve the 2 points in this (for sale) category. Any unused affordable building allotment transfer shall be returned to the affordable allotment set-aside category.

For Rent Projects

10% BMR Commitment

5% BMR Commitment

P o i n t s	Provides for 10% affordable units VERY LOW/LOW	Provides for 10% affordable units LOW	Provides for 5% affordable units VERY LOW/LOW	Provides for 5% affordable units LOW
4	10	0		
3	5	5		
2	0	10	5	0
1			0	5

SECTION 14. Subsection B.1 of § 18.78.280 of the Morgan Hill Municipal Code is amended to read as follows:

B. Standards and Criteria.

1. Provides harmonious use of exterior building materials and varying front elevations with low repeat factor. A reverse floor plan does not count as a separate elevation. An elevation to be considered different must include significant modifications to the exterior appearance of the structure.

a. Floor plan & elevation repeats 0 - 3.5 times:

one point

For single family detached buildings, repeat factor is the total number of building lots divided by: the number of floor plans multiplied by the number of alternate elevations for each plan (i.e.: repeat factor = number of building lots/(floor plans)*elevations).

For single-family attached or multi-family buildings, repeat factor is the number of structures divided by: the number of different footprints times the number of alternate elevations for each footprint, (must have a minimum of two elevations within the project.)

SECTION 15. Subsection B.2a v. of § 18.78.280 of the Morgan Hill Municipal Code is amended to read as follows:

B. Standards and Criteria.

2. Uses design and construction that conserve resources:

a. Provides for energy conservation through the use of energy-efficient building techniques, materials, and appliances, such that the buildings consume less energy than allowed by California's Title 24 Building Energy Efficiency Standards, as documented in the energy compliance reports submitted at the time of application for building permits. **(Maximum four points will be assigned under this criteria)**

v. Homes include solar panels for power generation and/or alternate energy sources, such as solar hot water, solar space heating or other energy saving methods not included elsewhere in the category. **(up to two points)**

SECTION 16. Subsection B.3a of § 18.78.280 of the Morgan Hill Municipal Code is amended to read as follows:

B. Standards and Criteria.

3. Uses materials and construction techniques that exceed current building requirements of the Uniform Building Code adopted by the city as follows:

a. Installation of cast-iron drainage pipe and piping insulation between floors for sound reduction of plumbing, and installation of future ready wiring concepts such as home running phone lines from all habitable rooms directly to main phone box rather than looping using RJ6 for television/video and high speed computer access, and CAT5R or equivalent for telephone lines.**(one point)**

SECTION 17. Subsection B.4a of § 18.78.280 of the Morgan Hill Municipal Code is amended to read as follows:

B. Standards and Criteria.

4. Provides architectural variation and differentiation as follows:

a. Use of porches, balconies, or multi-unit courtyards for any area viewed from the public right of way on at least 25% of units to promote a neighborhood feel **(two points)**

SECTION 18. Subsection B.5 of § 18.78.280 of the Morgan Hill Municipal Code is amended to read as follows:

B. Standards and Criteria.

5. Proposed project phase(s) are judged by the Planning Commission to be superior with respect to overall project excellence. **(1 point)**

The determination of project excellence will include input from the Building Division regarding the performance of the developer during any previous building permit processes. The timeliness and accuracy of the application submittal by the developer for any previous project will be an important consideration. Negative performance factors include more than 2 plan checks and/or projects which submit for building permits prior to ARB approval and prior to application for Final Map approval. No recommendation will be provided for developers who have not previously built in the City.

SECTION 19. Subsection B.1f of § 18.78.290 of the Morgan Hill Municipal Code is amended to read as follows:

B. Standards and Criteria.

1. Provides good site design considerations in all lot layouts.

f. Over-all excellence of lot layout. Layouts deemed to be average will receive **zero points**, above average layouts will receive **one point**, and superior layouts will receive **two points**.

For scoring purposes points will be assigned as follows:

Average Project: A project requiring 2 or more major design changes, or which has 4 or more minor problems. **(0 points)**

Above Average Project: A project requiring 1 major design change, or which has 3 minor problems. **(1 point)**

Superior Project: A project requiring no major changes and which has 2 or less minor problems. **(2 points)**

This criterion shall not apply to that portion of the project awarded a building allotment prior to October 1, 1999, except where the inclusion of the earlier allocated phase(s) would result in a higher score.

SECTION 20. Subsection B.2a of § 18.78.290 of the Morgan Hill Municipal Code is amended to read as follows:

B. Standards and Criteria.

2. Project street design complements lot layout and building orientation:

a. Locates streets and arranges units to provide park/openspace area that is aggregated into large meaningful area(s) that are conveniently located within the development. (one point.)

SECTION 21. Subsections B.3 d and B.5 of § 18.78.300 of the Morgan Hill Municipal Code are amended to read as follows:

B. Standards and Criteria.

3. Streets, access ways and parking are designed for safe and efficient circulation.
(Maximum nine points will be assigned under this criteria)

d. Eliminates existing stub or substandard streets. Frontage improvements will not apply to this criteria unless the improvements occur along an arterial or the project completes full width street improvements along the project frontage. (up to two points)

5. Provides for dedication and improvement of extensions to existing streets outside of the project boundaries. The cost of the offered dedication and public improvements shall be equal to or greater than \$1000 per unit per point. Should the offered dedication and improvements be redundant to those made under 1f. of the Public Facilities section, points will be awarded here first and then any excess applied to the PF section. For example, if \$1500 per unit of improvements were recorded in this section and in PF, 1 point would be awarded here and \$500 per unit would be available to add to any non-redundant improvements made under PF.

Projects which offer to complete adjacent or nearby off-site public facility improvements which were committed to be installed by another project under a previously approved application will not receive points for the same commitment.
(Maximum of two points)

a. Provides for dedication of extensions to existing streets outside of the project boundaries. **(one point)**

b. Provides improvements for dedicated extensions of existing streets outside of the project boundaries. **(one point)**

c. Provides dedication and improvement of street extensions for existing streets outside of the project boundaries. **(two points)**

Note: For B5 above, emphasis will be placed on improvements for dedicated extensions of existing streets within one mile beyond the project boundaries.

Proposed developments must be assigned a minimum passing score of seven points under this category in order to qualify for building allotments.

SECTION 22. Subsection B.3 of § 18.78.310 of the Morgan Hill Municipal Code is amended to read as follows:

B. Standards and Criteria.

3. Installation of an intrusion and fire alarm system, monitored by a central station and which meets City ordinance. For multi-family projects, points will be awarded for a fire alarm system without central monitoring, and NO intrusion system. (two points)

SECTION 23. Section 18.78.340 of the Morgan Hill Municipal Code is amended to read as follows:

18.78.340 Eligible projects.

An eligible project is any type of residential development consisting of a maximum of **6** dwelling units. A project must also be located on a site which represents the ultimate or finite development potential of the property. In order to be considered as ultimate development, no further subdivision and/or residential development of the property would be possible pursuant to the general plan and this title. The only exception to this limitation would be the construction of a secondary dwelling unit on a single-family lot. (Ord. 1397 N.S. § 1, 1998; Ord. 1323 N.S. § 39, 1997; Ord. 1228 N.S. § 14, 1995; Ord. 1034 § 1 (part), 1991)

SECTION 24. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 25. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at a special meeting of the City Council of the City of Morgan Hill held on the 10th Day of July, 2002 and was finally adopted at a regular meeting of said Council on the 21st day of August, 2002 and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

🍷 CERTIFICATE OF THE CITY CLERK 🍷

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1575, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st day of August, 2002.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: AUGUST 21, 2002

Agenda Item # 29

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1576, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1542, N.S., TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-02: E. DUNNE - GREWAL TO ALLOW FOR A NINE-MONTH EXTENSION OF TIME (APN 728-11-026)

RECOMMENDED ACTION(S): Motion to Adopt Ordinance No. 1576, New Series.

EXECUTIVE SUMMARY:

On July 31, 2002, the City Council Introduced Ordinance No. 1576, New Series, by the Following Roll Call Vote: AYES: Carr, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: Chang; ABSENT: None.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1576, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1542, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-02: E. DUNNE - GREWAL TO ALLOW FOR A NINE-MONTH EXTENSION OF TIME (APN 728-11-026)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 00-17, adopted April 25, 2000, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-00-02: E. Dunne - Grewal	4

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents, which were signed by the City of Morgan Hill and the property owner, set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be amended by this ordinance and shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the amended development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 9. AMENDMENT TO PARAGRAPH 14, ADDING THE FOLLOWING SUBSECTION (q). The project shall provide the following information, by address for each unit, to the Community Development Department:

- Date of sale
- The number of bedrooms.
- The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

SECTION 10. Exhibit B of the development agreement is amended to read as follows:

EXHIBIT "B"

**DEVELOPMENT SCHEDULE MP- 00 - 02: E. Dunne-Grewal
FY 2000-01 (1 allotment) , FY 2001-02 (3 allotments)**

I. SUBDIVISION AND ZONING APPLICATIONS

Applications Filed: (12-11-00)

II. SITE REVIEW APPLICATION

Application Filed: (~~07-01-01~~) (02-01-02)

III. FINAL MAP SUBMITTAL

Map, Improvements Agreement and Bonds: (~~07-01-01~~) (07-12-02)

IV. BUILDING PERMIT SUBMITTAL

Submit plans to Building Division for plan check:

Fiscal Year 2000-01 Allotment:	(10-01-01) (06-01-02) (11-30-02)
Fiscal Year 2001-02 Allotment:	(6-01-02) (11-30-02)

V. BUILDING PERMITS

Obtain Building Permits:

Fiscal Year 2000-01 Allotment:	(12-31-01) (06-01-02) (02-15-03)
Fiscal Year 2001-02 Allotment:	(06-30-02) (02-15-03)

Commence Construction:

Fiscal Year 2000-01 Allotment:	(12-31-01) (06-01-02) (03-30-03)
Fiscal Year 2001-02 Allotment:	(06-30-02) (03-30-03)

Failure to obtain building permits and commence construction by the date listed in Section V. above, shall result in the loss of building allocations. Failure to submit a Final Map Application or a Building Permit Submittal, Sections III. and IV. respective, six (6) or more months beyond the filing dates listed above shall result in applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additional, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above, Sections III. and IV. respectively, may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 2 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

The foregoing ordinance was introduced at a special meeting of the City Council of the City of Morgan Hill held on the 31st Day of July, 2002 and was finally adopted at a regular meeting of said Council on the 21st day of August, 2002 and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

🦉 CERTIFICATE OF THE CITY CLERK 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1576, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st day of August, 2002.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: AUGUST 21, 2002

ADOPT ORDINANCE NO. 1577, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 16 ACRES, LOCATED ON THE EAST SIDE OF PEET ROAD - BETWEEN COCHRANE ROAD AND HALF ROAD FROM COUNTY A-20S TO CITY R-1(20,000). (APNs 728-34-006 & 007)

Agenda Item # 30

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

RECOMMENDED ACTION(S): Motion to Adopt Ordinance No. 1577, New Series.

EXECUTIVE SUMMARY:

On July 31, 2002, the City Council Introduced Ordinance No. 1577, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1577, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 16 ACRES, LOCATED ON THE EAST SIDE OF PEET ROAD - BETWEEN COCHRANE ROAD AND HALF ROAD FROM COUNTY A-20S TO CITY R-1(20,000). (APNs 728-34-006 & 007)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Establish an R-1(20,000) pre-zoning designation for 16-acres of land located on the east side of Peet Road, between Cochrane Road and Half Road.

SECTION 2. DESCRIPTION OF LAND IN PRE-ZONING. There hereby is attached hereto and made a part of this ordinance a legal description entitled “Exhibit A” which gives the boundaries of the described parcels of Land.

SECTION 3. INCORPORATING THE MAP BY REFERENCE. There hereby is attached hereto and made a part of this ordinance, a zoning map entitled “Exhibit B” Map Showing Pre-zoning Lands of Borello, Being a Part of Ordinance No. 1577, New Series, which gives the boundaries of the described parcels of Land.

SECTION 4. FINDING OF CONSISTENCY WITH THE GENERAL PLAN. The City Council hereby finds that the amendments established by this ordinance as herein described are compatible with the goals, objectives, policies and land use designation of the General Plan of the City of Morgan Hill. The Council further finds that the proposed amendments are required in order to serve the public health, convenience and general welfare as provided by Section 18.62.010 of the Morgan Hill Municipal Code.

SECTION 5. An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of California Environmental Quality Act. Based upon said study a mitigated Negative Declaration will be filed.

SECTION 6. The approved project shall be subject to the following condition:

1. Future subdivision and development of the 16-acre site (APNs 728-34-006 & 007) shall be in compliance with the site development standards of the R-1(20,000) zoning district.
2. Prior to annexation approval, the applicant shall record a 100 foot agricultural buffer running along the southern property line of APN 728-34-006, contiguous with APN 728-34-007, which shall prohibit habitable structures from being constructed within the 100 foot buffer. Said easement

shall remain in place until such time as agricultural activities cease on APN 728-34-006

3. Applicant shall disclose to future buyers of APN 728-34-007 the existing agricultural use of parcel 728-34-006.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at a special meeting of the City Council of the City of Morgan Hill held on the 31st Day of July, 2002 and was finally adopted at a regular meeting of said Council on the 21st day of August, 2002 and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

☪ **CERTIFICATE OF THE CITY CLERK** ☪

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1577, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st day of August, 2002.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: AUGUST 21, 2002

Agenda Item # 31

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1578, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1464, N.S., TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-18: CENTRAL - CENTRAL PARK TO ALLOW FOR A TWO-MONTH EXTENSION OF TIME (APN 726-27-105)

RECOMMENDED ACTION(S): Motion to Adopt Ordinance No. 1578, New Series.

EXECUTIVE SUMMARY:

On July 31, 2002, the City Council Introduced Ordinance No. 1578, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1578, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1464, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-18: CENTRAL - CENTRAL PARK TO ALLOW FOR A TWO-MONTH EXTENSION OF TIME (APN 726-27-105)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 00-17, adopted April 25, 2000, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-98-30: Central - Central Park	3
MP-00-18: Central - Central Park	15

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents, which were signed by the City of Morgan Hill and the property owner, set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be amended by this ordinance and shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 9. AMENDMENT TO PARAGRAPH 14, ADDING THE FOLLOWING SUBSECTION (t). The project shall provide the following information, by address for each unit, to the Community Development Department:

- Date of sale
- The number of bedrooms.
- The final sales price

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

SECTION 10. Exhibit B of the development agreement is amended to read as follows:

EXHIBIT "B"

**DEVELOPMENT SCHEDULE MP-00-18: Central - South Valley Developers
FY 2001-2002, FY 2002-2003, FY 2003-2004**

I.	SUBDIVISION AND ZONING APPLICATIONS Applications Filed:	July 31, 2001
II.	SITE REVIEW APPLICATION Application Filed:	July 31, 2001
III.	FINAL MAP SUBMITTAL Map, Improvements Agreement and Bonds:	March 1, 2002
IV.	BUILDING PERMIT SUBMITTAL-FY 2001-02 Submit plans to Building Division for plan check:	April 2, 2002
V.	PULL BUILDING PERMITS-FY 2001-02 <u>3 permits</u> must be pulled from the Building Division:	May 8, 2002

	August 30, 2002
VI. COMMENCE CONSTRUCTION-FY 2001-02 Construction must have begun on 3 permits.	June 30, 2002 August 30, 2002
VII. PULL BUILDING PERMITS-FY 2002-03 10 <u>permits</u> must be pulled from the Building Division:	May 8, 2003
VIII. COMMENCE CONSTRUCTION-FY 2002-03 Construction must have begun on 10 permits.	June 30, 2003
IX. BUILDING PERMIT SUBMITTAL-FY 2003-04 Submit plans to Building Division for plan check:	April 2, 2003
X. PULL BUILDING PERMITS-FY 2003-04 <u>5 permits</u> must be pulled from the Building Division:	May 8, 2004
XI. COMMENCE CONSTRUCTION-FY 2003-04 Construction must have begun on 5 permits.	June 30, 2004

Failure to commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit, two (2) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additional, failure to meet the Final Map Submittal, Building Permit Submittal or Pull Permit deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 8 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

The foregoing ordinance was introduced at a special meeting of the City Council of the City of Morgan Hill held on the 31st Day of July, 2002 and was finally adopted at a regular meeting of said Council on the 21st day of August, 2002 and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

☞ CERTIFICATE OF THE CITY CLERK ☞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1578, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st day of August, 2002.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: AUGUST 21, 2002

ADOPT ORDINANCE NO. 1579, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1464, N.S., TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-18: CENTRAL - CENTRAL PARK TO ALLOW FOR A TWO-MONTH EXTENSION OF TIME (APN 726-27-105)

Agenda Item # 32

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

RECOMMENDED ACTION(S): Motion to Adopt Ordinance No. 1579, New Series.

EXECUTIVE SUMMARY:

On July 31, 2002, the City Council Introduced Ordinance No. 1579, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT: None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1579, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDED DEVELOPMENT AGREEMENT FOR PHASES V & VI OF THE MISSION RANCH PROJECT, APPLICATIONS MP 00-21 & MP 01-03: MISSION VIEW-DIVIDEND (APNs 728-32-001, 002, 003 & 728-33-001)

WHEREAS, the City Council of the City of Morgan Hill has adopted Resolution No. 4028, establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Morgan Hill Municipal Code; and

WHEREAS, Sections 65864 through 65869.5 of the California Government Code authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property; and

WHEREAS, the Planning Commission, pursuant to Chapter 18.78.380 of the Morgan Hill Municipal Code, awarded 24 building allotments for application MP 00-21: Mission View-Dividend and 4 building allotments for application MP 01-03: Mission View-Mission Ranch; and

WHEREAS, on December 5, 2001, the City Council approved the development agreement for application MP-00-21: Mission View-Dividend; and

WHEREAS, The applicant is requesting to amend the approved development agreement to incorporate the four development allotments awarded to the MP 01-03: Mission View-Mission as part of the 2001 RDCS competition.

WHEREAS, said development agreement amendment was considered by the City Council at their regular meeting of July 31, 2002, at which time the City Council approved of development agreement amendment application DAA 01-07: Mission View-Mission Ranch.

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill.

These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to replaces Ordinance No. 1535 and shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 2. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 3. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 4. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

SECTION 5. AMENDED DEVELOPMENT AGREEMENT. The amended development agreement, attached as Exhibit A, shall replace the agreement approved under Ordinance No. 1535.

The foregoing ordinance was introduced at a special meeting of the City Council of the City of Morgan Hill held on the 31st Day of July, 2002 and was finally adopted at a regular meeting of said Council on the 21st day of August, 2002 and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: **COUNCIL MEMBERS:**
NOES: **COUNCIL MEMBERS:**
ABSENT: **COUNCIL MEMBERS:**
ABSTAIN: **COUNCIL MEMBERS:**

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

🏛️ CERTIFICATE OF THE CITY CLERK 🏛️

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1579, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21st day of August, 2002.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

**RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 6103**

EXHIBIT A
City of Morgan Hill
ORD 1579 Page -4-

Recorded at the request of
and when recorded mail to:

City of Morgan Hill
Community Development Department
17555 Peak Avenue
Morgan Hill, CA 95037

RESIDENTIAL DEVELOPMENT AGREEMENT

This Agreement entered into this _____ day of _____, 2002, by and between **Dividend Homes Inc.**, under the Agreement, ("Property Owner") and the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws of the State of California (the "City").

RECITALS

This Agreement predicated upon the following facts:

A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;

B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements;

C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;

D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);

E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;

F. On December 5, 2001, the City Council of the City of Morgan Hill adopted Ordinance No. 1535, New Series approving the Development Agreement with the Property Owner,

and the Ordinance thereafter took effect on January 5, 2002.

NOW, THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:

- (a) "City" is the City of Morgan Hill.
- (b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.
- (c) "Property Owner" means the party having a legal or equitable interest in the real property as described in paragraph 3 below and includes the Property Owner's successor in interest.
- (d) "Real Property" is the real property referred to in Paragraph 3 below.

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

- Exhibit "A" - Development Allotment Evaluation
- Exhibit "B" - Development Review and Approval Schedule
- Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.

3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".

4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.

5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.

6. Recordation of Development Agreement. No later than ten (10) days after the City

enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.

7. Relationship of Parties. Property Owner and the City agree that each is not the agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. City's Approval Proceedings for Project. On July 11, 2001 *and May 14, 2002*, the City of Morgan Hill approved a development plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MP-00-21: Cochrane-Mission Ranch *and MP 01-03: Mission View-Mission Ranch*, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of ~~24~~ **28** single family detached homes as approved by the City of Morgan Hill Planning Commission.

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from

performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

(b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and

specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this Agreement until Property Owner has obtained insurance as described herein and received the approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) **Compensation Insurance.** Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) **Public Liability and Property Damage Insurance.** Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).

(c) **Additional Insured.** Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

13. Cancellation of Insurance. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Single Family Medium and zoning classification of R-1 7,000/RPD, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

(a) Permitted uses of the property are limited to the following:

The Tentative map, Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Administrative Site and Architectural Review Process.

- (b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative map and Grading Plans and Precise Residential Development Plans as approved by the City of Morgan Hill Planning Commission and Administrative Site and Architectural Review Process.

- (c) Maximum height for each proposed building is:

That height shown on the Architectural plans as approved by the City of Morgan Hill under Administrative Site and Architectural Review Process.

- (d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Administrative Site and Architectural Review Process.

- (e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

- (g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

- (h) Property Owner agrees to include the following safety features in the development:

- (i) Fire escape ladders will be provided in all upper floor bedrooms.
- (ii) Fire extinguishers will be provided in all units.
- (iii) All outdoor lighting will meet the Police Department specifications.
- (iv) Each home will have internally illuminated address numbers and the address numbers painted on the curb.
- (v) Non combustible siding material will be used on at least 50% of the homes and on 50% of the individual unit.
- (vi) Intrusion and fire alarm system with auto dialer or monitored by a central station will be installed in all units. The system shall monitor all doors and windows.
- (vii) Automatic earthquake shut-off valves shall be provided for gas

service.

(i) Property Owner agrees to include the following open space and landscape improvements in the development:

- (i) A 15' landscape buffer will be installed along Mission View and a 30' buffer will be installed along Peet Rd. and a 30' buffer will be provided along Cochrane Road.
- (ii) All park and open space area are to be maintained by a HOA.
- (iii) A path will be provided along the front of the project that will provide a link to County bike and trail system.
- (iv) Twenty four inch box size trees will be provided at a ratio of one tree per ten on-site trees. The trees shall have a minimum height of nine feet and spread of three to four feet.
- (v) Varied front yard landscape plans will be installed prior to occupancy.
- (vi) Deciduous trees will be planted along the south facing sides of the homes.
- (viii) Drought tolerant grasses will be used for lawn areas. Lawn areas will not exceed 25 percent of the landscape area.
- (ix) Automatic irrigation systems will be installed which utilize separate valves and circuits for trees, shrubs and ground covers and lawn areas.
- (x) Hardscape will be provided on at least 15 percent of the landscape area.
- (xi) Water conserving plants will be used from City Selected Plant List.
- (xii) All street trees (one per lot, two per corner lot) will be 24-in. box trees from the city-approved list.

(k) Property Owner agrees to purchase one transferable development credit (TDC's) subject to this development potential transfer mechanism. Should purchase of the TDC's prove infeasible, Property Owner may, at City's option, pay an in-lieu open space fee in an amount satisfactory to the City Council. Proof of unsuccessful negotiation for the TDC's must be presented to the City with the request of the in-lieu fee option. Building permits will not be granted unless this provision has been complied with to the satisfaction of the City Council.

(l) Property Owner agrees to include the following affordable housing features in the development:

(i) The Property Owner shall provide at least two of the units for participation in a Below Market Rate (BMR) for sale program as low income units as approved by the Community Development Department. The BMR unit(s) shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process. The BMR units shall be under construction and the framing inspection passed prior to the framing inspection on the ~~12~~ **14th** market rate unit.

(ii) ***The Property Owner agrees to build the 14th BMR for the project as part of Phase VII of the Mission Ranch project or if 2 allocations become available sooner, as two final units within Phase VI.*** ~~The Property Owner agrees to pay 40 percent of the per unit cost of the standard housing mitigation fee prior to the issuance of building permits for the project, if determined to be required by the Planning Manager and City Attorney.~~

(iii) Below Market Rate (BMR) purchasers shall be treated in the same manner as purchasers of non-BMR units. Developer, including Developer's company, employees, and/or agents) agrees to assist BMR purchasers with all phases of the sales transaction, including, but not limited to, the preparation of any and all documents necessary to complete the sale and representation by a licensed real estate agent/broker.

(iv) The two BMR units shall be 4 bedrooms 2.5 baths and 1637 sq. ft. in size.

(vi) Each of the BMRs shall be completed with fixtures, appliances, flooring and finishes offered as base or standard to the market rate units.

(m) Property Owner agrees to include the following construction features in the development:

(i) Dry wall will be source separated and recycled;

(ii) Cardboard containers and boxes are source separated and recycled.

(iii) Buildings consume 15% less energy than allowed by California's Title 24. This will be accomplished by using the high efficiency furnaces, insulating hot water pipes, providing thermostatically controlled attic fans, exterior wall and attic insulation and points of demand hot water circulating system and high efficiency appliances.

(iv) Heating systems with two separate zones will be used in minimum of 60% of the dwelling units.

(v) Recirculating hot water system with demand pumping

(vi) Class A light weight concrete roof tile.

(vii) Installation of additional grounding electrode such as driven ground rod, plate electrode, metal underground water pipe (extending at least 10 feet in distance) or ground ring, and installation of cast-iron drainage pipe and piping insulation between floors for sound reduction of plumbing.

(viii) Future ready wiring such as home running phone lines from all habitable rooms directly to main phone box rather than looping using RJ6 for television/video and CAT5R or equivalent for telephone lines.

(ix) Plywood floors are nailed and just prior to carpet installation they are screwed to avoid squeaking. Post tensioned slab floors, all sheet rock screwed. A/C provided. Gas will be supplied to all dryer spaces plus 220 volt outlet. Insulate interior bath walls. Attic spaces have thermostatic controlled exhaust fans. Vertical drain lines between floors will be cast iron to reduce noise.

(x) Plan A & C will extend porch across front of den and/or living room. Uses porches, balconies, or multi-unit courtyards on at least 25% of units

(xi) At least two different roof lines and two different pitches will be used throughout the project.

(n) The Property Owner agrees to provide the following circulation improvements:

(i) As part of the second phase (2003-04 allotments) the property owner agrees to install a pathway from the project south to Half Rd. The amount of pathway installed will be based on a \$2000/per unit commitment. The final design and location of the pathway will be to the satisfaction of the Director of Public Works. The pathway

- shall be completed prior to the issuance of the 24th building permit.
- (ii) The owner shall install crosswalks and caution signals or other off-site equivalent traffic safety improvements as designated and approved by MHUSD.
 - (iii) The property owner will provide on-site walkways and bike paths throughout the development. A bike/pedestrian path will be installed through the SCVWD land to connect the Carmelo Ct. cul-de-sac and to the tennis courts in the retention basin.
 - (iv) Project will provide for a third looped connection to Mission View Road.
 - (v) Cochrane Road improvements will be completed along the project frontage and complete the corner improvements onto Peet Road with this phase of the project. The improvements will include street, path and landscaping.
 - (vi) *Peet Road improvements will be completed along the phase VI frontage and complete the corner improvements onto Mission Avenida. The improvements will include street, path and landscaping.*
 - (vii) Applicant will contribute \$1,000 per unit to the Capital Program Fund.

Improvements

(o) The Property Owner agrees to provide the following park and recreation improvements:

- (i) The applicant will pay the standard park fees.
- (ii) A looping system of pedestrian/bike paths will be installed to provide access to all park and recreation areas.
- (iii) Class II bicycle pathways will be provided along the improved Mission View Dr. and a new pedestrian/bike path will be constructed along Cochrane Road.

(p) Project will grid water main between Cochrane Road, Peet Road, and Mission View Dr., plus interior project water lines are gridded.

(q) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

(r). The project shall provide the following information, by address for each unit, to the Community Development Department:

- Date of sale***
- The number of bedrooms.***
- The final sales price***

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

15. Effect of Agreement on Land Use Regulations.

(a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees and apply building standards which are in effect at the time the building permits are actually issued rather than those effective as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

17. Periodic Review.

(a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraph 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

(a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;

(b) Property Owner gives the City written notice of its decision to terminate this Agreement;

(c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or

(d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement which was known or should have been known to be false in any material respect when it was initially made;

(b) A finding and determination by the City of Morgan Hill made following a periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.

(b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.

(c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are

not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

- (i) Punitive damages;
- (ii) Damages for lost profits;
- (iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

APPROVED AS TO FORM:

CITY OF MORGAN HILL

HELENE LEICHTER, City Attorney

J. EDWARD TEWES, City Manager

PROPERTY OWNER(S)

Attest:

IRMA TORREZ, City Clerk

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY, MUST BE
ACKNOWLEDGED BY A NOTARY)**

EXHIBIT "A"

DEVELOPMENT ALLOTMENT EVALUATION

MP-00-21 *& 01-03*: Mission View-Dividend

(See Entire Documents on File in the
Community Development Department - City Hall)
CITY OF MORGAN HILL

EXHIBIT "B"

DEVELOPMENT SCHEDULE MP-00-21 & *MP 01-03*: Mission View-Dividend Homes FY 2002-2003, FY 2003-2004

I.	SUBDIVISION AND ZONING APPLICATIONS Applications Filed:	July 31, 2001
II.	SITE REVIEW APPLICATION Application Filed:	July 31, 2001
III.	FINAL MAP SUBMITTAL Map, Improvements Agreement and Bonds:	March 1, 2002 <i>August 1, 2002</i>
IV.	BUILDING PERMIT SUBMITTAL-FY 2002-03 Submit plans to Building Division for plan check:	April 2, 2002 <i>January 2, 2003</i>
V.	PULL BUILDING PERMITS-FY 2002-03 <u>15 permits</u> must be pulled from the Building Division:	May 8, 2003
VI.	COMMENCE CONSTRUCTION-FY 2002-03 Construction must have begun on 15 permits.	June 30, 2003
VII.	BUILDING PERMIT SUBMITTAL-FY 2003-04 Submit plans to Building Division for plan check:	April 2, 2003
VIII.	PULL BUILDING PERMITS-FY 2003-04 <u>9 13</u> permits must be pulled from the Building Division:	May 8, 2004
IX.	COMMENCE CONSTRUCTION-FY 2003-04 Construction must have begun on <u>9 13</u> permits.	June 30, 2004

Failure to commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit, two (2) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additional, failure to meet the Final Map Submittal, Building Permit Submittal or Pull Permit deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least ~~12~~ *14* dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

EXHIBIT "C"

LEGAL DESCRIPTION
MP-00-21 & 01-03: Mission View-Dividend

The land referred to herein is situated in the State of California, County of Santa Clara, City of Morgan Hill and is described as follows:

All of Lot B, as shown on that certain Map entitled "Tract No. 9203, Mission Ranch, Phase 3," which map recorded June 9, 2000 in Book 728 of Maps, pages 28, through 30, inclusive, Santa Clara County Records.

APNs 728-32- 01, 02, 03 & 728-33-01